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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 947

IGAL ROODENKO, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CARLE WHITEHEAD,
Counsel for Petitioner.

ARTHUR A. BROOKS, JR.,
of Counsel.

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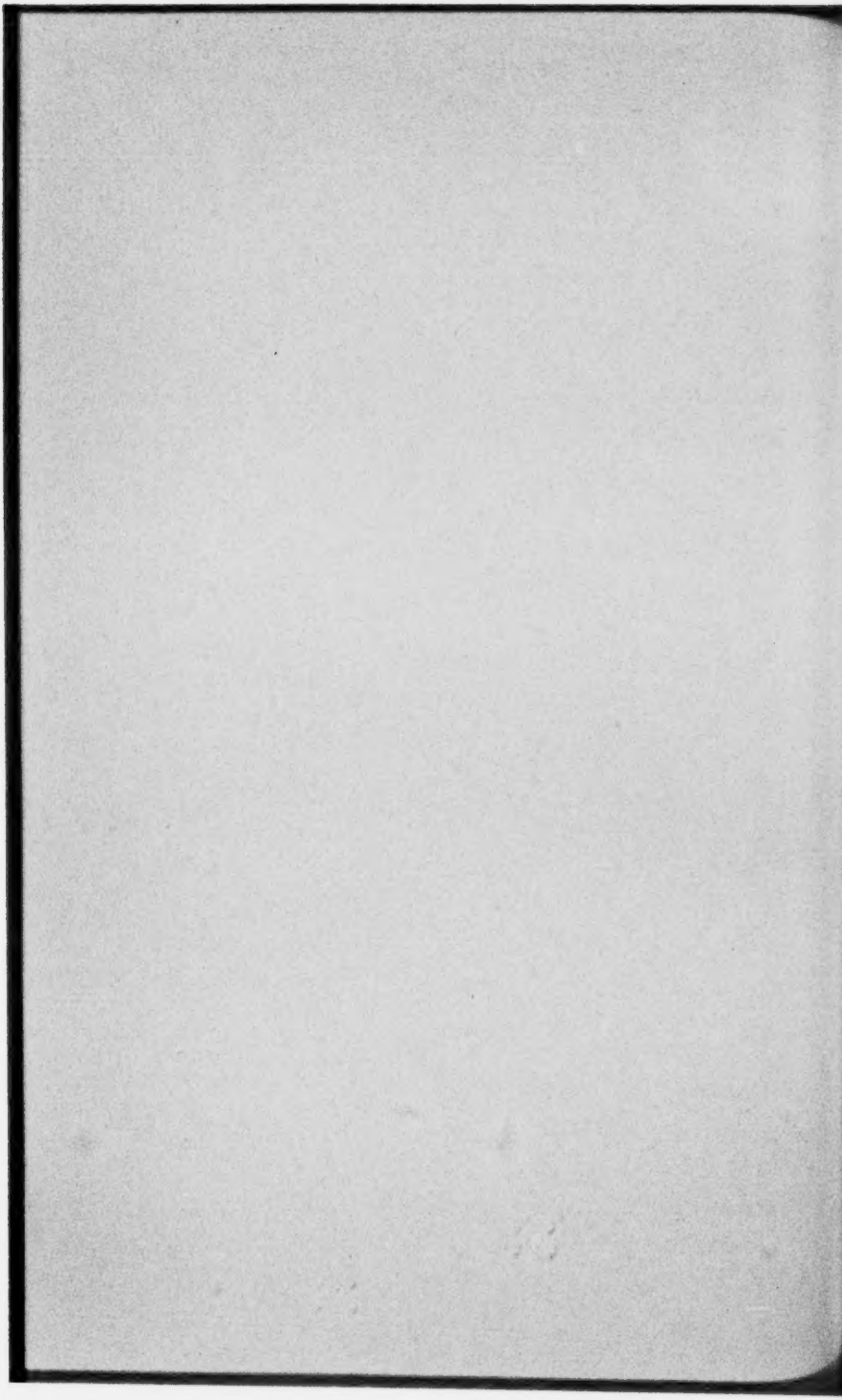

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No.

IGAL ROODENKO, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Igal Roodenko respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

(Prefatory Note: The record in this case also bears the titles of three other cases which were tried in immediate succession with this case, all being considered, briefed and decided as if one. By stipulation, approved by the Circuit Court of Appeals, a single brief was filed in the above entitled case and all of the evidence in the record

is to be considered, as it was in the lower court, as if introduced in this case. The other three cases are abiding, and are to be governed by, the final decision in this case.)

STATEMENT OF THE CASE.

In the District Court for the District of Colorado, jury being waived, petitioner was convicted of violation of one of the Rules and Regulations promulgated by Selective Service for *Government Operated* Civilian Public Service Camps (Opinion R. 7-14, 55 F. Supp. 648). Appellant admitted the act and challenged the legality and the constitutionality of the Rules and Regulations, of the orders under which they were promulgated and of *that provision* of the Selective Training and Service Act of 1940 under which said orders purported to be issued. The legality and the constitutionality of the *government-operated* Civilian Public Service Camp system is, therefore, the issue, the Circuit Court of Appeals having overruled each of these challenges and affirmed the conviction December 22, 1944, with opinion R. 79-85. Rehearing denied January 9, 1945 (R. 102) without opinion. Not yet reported.

JURISDICTION.

Petitioner submits that this Honorable Court has jurisdiction to review said judgment of affirmance under Judicial Code Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938, and under the Act of March 8, 1934, 48 Stat. 399, 18 U.S.C.A. sect. 688, and the Rules of this Court promulgated pursuant thereto. The writ was granted and jurisdiction taken, apparently under this rule, in *Hartzel vs. United States,* 322 U.S. 608, and in *Korematsu vs. United States* (No. 22 decided Dec. 18, 1944), 65 S. Ct. 193.

STATUTE INVOLVED.

The statute involved is the Selective Training and Service Act of 1940, 50 USCA, Appendix, sects. 301 et seq. (54 Stat. 885.)

The parts of the Act particularly involved are the following:

U.S.C.A. Sect. 301

(a). The Congress hereby declares that it is imperative to increase and train the personnel of the armed forces of the United States. (Sect. 1(a).)

(b). The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service. (Sect. 1(b).)

U.S.C.A. Sect. 305 (g)

Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. (Sect. 5(g).)

U.S.C.A. Sect. 310

(a). The President is authorized

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2)-(3) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards'' etc. (followed by detailed provisions for organization of the Selective Service System and that local and appeal boards shall have civilian personnel but as to

the balance of System "any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any reserve component thereof" may be assigned to duty in the System without loss of his status in the service from which assigned.

(4) and (5) provide for use of services of other departments of government and for printing, supplies, etc.

(6) authorizes rules and regulations for special services of persons convicted of violation of provisions of this Act.

(b). Provides that the powers vested by the Act in the President may be delegated by him to the Director of the System and by him redelegated to others.

(c). Provides for acceptance of volunteer service.

(d). Makes the Army Chief of Finance the "fiscal, disbursing and accounting agent" of the System.

(e). Provides a medical board "who shall examine the physical, mental and moral qualification requirements for admission to the Army, Navy and Marine Corps" and perform other duties.

EXECUTIVE ORDER.

The President, by Executive Order No. 8675 of February 6, 1941 (6 F.R. 831), authorized the Director of Selective Service "to establish, designate or determine work of national importance under civilian direction" to which may be assigned conscientious objectors classified as opposed to participation in both combatant and non-combatant training and service in the military forces; authorized the Director to make the necessary assignments to such work, to determine the agencies, organizations and individuals that may provide such direction and to have "general supervision and control over such work"; and finally, to prescribe necessary rules and regulations. (Appendix A.)

SELECTIVE SERVICE SYSTEM, ORDER NO. 111.

Director, Lewis B. Hershey, by Order No. 111, June 25, 1943 (Appendix B), established Civilian Public Service Camp No. 111 at Mancos, Colorado, and designated the work to be done therein, by the conscientious objector assignees, "under the technical direction of the Bureau of Reclamation" which shall "be responsible for the housing, feeding, clothing, discipline and provision of necessary medical and dental care. Men shall be assigned to and retained in camp in accordance with the provisions of the Selective Training and Service Act of 1940 and regulations and orders promulgated thereunder. Supervision and control of the Mancos Project shall be under the Selective Service System through the Camp Operations Division of National Selective Service Headquarters."

RULES AND REGULATIONS.

Selective Service System thereupon promulgated "Rules and Regulations for Government-Operated Camps" (Appendix C) for violation of which petitioner stands convicted. They cover ten pages of the appendix and regulate and control every activity of the assignee every hour of the day and are best summarized in a directive issued to the assignees through the camp director, as follows (R. 22):

> "From the time an assignee reports to camp until he is finally released he is under the control of the Director of Selective Service. He ceases to be a free agent and is accountable for all of his time, in camp and out, twenty-four hours a day. His movements, actions and conduct are subject to control and regulation. He ceases to have certain rights and is granted privileges instead. These privileges can be restricted or withdrawn without his approval or consent as punishment, during emergencies, or as a matter of policy. He may be told when and how to work, what to wear and where to sleep. He can be required to submit to medical examination and treatment and to practice rules of health and sanitation. He may be moved from place to place and from job to job, even to foreign countries, for the convenience of the government regardless of his personal feelings or desires."

QUESTIONS PRESENTED AND REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

The question is the validity of the Rules and Regulations for violation of which petitioner stands convicted. This question involves that of the validity of Selective Service Order No. 111, authorizing the promulgation of said Rules and Regulations.

Petitioner contends that said Rules and Regulations are invalid and that, therefore, the decision and judgment of the Circuit Court of Appeals affirming the conviction of petitioner for violation of one of said Rules and Regulations should be reversed and that the writ should be allowed to that end.

A.

PETITIONER SAYS THAT SAID RULES AND REGULATIONS AND SAID SELECTIVE SERVICE ORDER NO. 111 ARE, AND EACH OF THEM IS, VOID BECAUSE THEY

1—are outside of any power which Congress delegated or purported or attempted to delegate in or by Section 5 (g) of the Selective Training and Service Act of 1940 or in or by any other part of said Act,

2—prohibit and penalize, that freedom of exercise of religion provided for by the said Act of 1940 and, therefore, are contrary to the Act and contrary to the First Amendment to the Constitution and particularly that clause thereof which guarantees the free exercise of religion,

3—deprive petitioner of his liberty and property without due process of law and take the private property of petitioner for public use without just compensation, contrary to the Fifth Amendment to the Constitution, and

4—subject petitioner to involuntary servitude, not as punishment for crime, contrary to the Thirteenth Amendment to the Constitution.

B.

IF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 BE CONSTRUED TO AUTHORIZE SELECTIVE SERVICE ORDER NO. 111 AND THE RULES AND REGULATIONS FOR GOVERNMENT OPERATED CAMPS, THEN TO THAT EXTENT SAID ACT IS CONTRARY TO THE FIRST, FIFTH AND THIRTEENTH AMENDMENTS TO THE CONSTITUTION FOR THE REASONS SET FORTH ABOVE (A, 2, 3 and 4).

C.

PETITIONER WAS DETAINED IN THE MANCOS CAMP UNDER MILITARY CONTROL AND DIRECTION AND WAS NOT UNDER CIVILIAN DIRECTION, AS REQUIRED BY THE ACT. HE WAS THEREFORE UNLAWFULLY DETAINED IN THE CAMP AND VIOLATION OF THE RULES AND REGULATIONS PROMULGATED TO GOVERN SUCH DETENTION WAS NO CRIME.

Petitioner further says that in affirming his conviction the Circuit Court of Appeals decided important questions of federal law, namely the questions above stated, which have not been but should be, directly settled by this Honorable Court and, further, that in so affirming said conviction said Circuit Court of Appeals decided said federal questions in a way probably in conflict with applicable decisions of this Court, all of which will be more fully pointed out in the annexed brief.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 2968, *Igal Roodenko, Appellant vs. United States of America, Appellee*, to the end that said cause may be reviewed and determined by this Honorable Court as provided by law and that the said judgment of the said Circuit

Court of Appeals be reversed by this Honorable Court and for such further relief as may seem proper. And your petitioner will ever pray.

CARLE WHITEHEAD,
Counsel for Petitioner.

A certified transcript of the record in said case, including the proceedings in the Circuit Court of Appeals for the Tenth Circuit accompanies this petition.

STATE OF COLORADO, City and County of Denver, ss.

Carle Whitehead, being first duly sworn, on oath deposes and says that he is counsel for petitioner, Igal Roodenko; that he has read the foregoing annexed petition and knows well the contents thereof; that he has also carefully read and studied a duly certified copy of the transcript of record which accompanies the petition herein, being the transcript of record in the case at bar; that the matters in said petition are in the judgment of affiant duly supported in and by said transcript of record, and that he knows of the therein recited proceedings and that the statements in said petition are true to the best of his knowledge and belief.

CARLE WHITEHEAD,

Subscribed and sworn to before me this 9th day of February, 1945.

BETTY WALTER,
Notary Public in and for said County and State.

My commission expires March 10, 1945.
(Notarial Seal.)

I do hereby certify that I have carefully examined the foregoing petition for a writ of Certiorari and the allegations thereof are true, as I verily believe, and in my opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

CARLE WHITEHEAD,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

A.

THE RULES AND REGULATIONS FOR GOVERNMENT-OPERATED CAMPS (Appendix C) AND SELECTIVE SERVICE ORDER NO. 111 (Appendix B) ARE VOID BECAUSE OUTSIDE OF ANY POWER WHICH CONGRESS DELEGATED OR PURPORTED OR ATTEMPTED TO DELEGATE BY SECTION 5 (g) OF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 OR BY ANY OTHER PART OF SAID ACT.

THE ACT.

The Selective Training and Service Act of (Sept. 16) 1940 will be referred to simply as the "Act." The section references will be those of the USCA Title 50.

The Act begins (Sec. 301) with a declaration of its purpose as follows:

> "(a) The Congress hereby declares that it is imperative to *increase and train the personnel of the armed forces* of the United States.
>
> (b) The Congress further declares that in a free society the *obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service.*" (Italics supplied.)

Section 302 carefully defines the obligation of "Registration of male citizens and alien residents; age limitations."

Section 303 contains a page and a half (fine print) of definitions, guides and standards relative to "Persons liable for training and service; number; term; status after completion of term; pay; allowances; and benefits; place of employment."

Section 304 provides the guides and standards in regard to the "Manner of selecting men for training and service; quotas."

Section 305, in three and one-half pages (fine print), provides definitions, guides and standards in regard to "Exceptions, exemptions, or deferments from training and service." Herein Congress very carefully defined and provided guides and standards for determining exemptions and deferments and for the continuance or termination of deferments and then, in subsection (g), provided, very specifically, the procedure for determination of the genuineness of a claim for exemption by reason of conscientious objection. When the procedure has been followed and, according to that procedure, the governmental agency has determined that the registrant is conscientiously opposed to even non-combatant military service, then "Nothing in this Act shall be construed to require" such service and the registrant shall "in lieu of such induction, be assigned to work of national importance under civilian direction." Neither this section nor any other part of the Act contains another word as to what shall be done with such registrant after such determination of his status.

Section 310 sets up the administrative agency—the machinery—for carrying out the provisions of the Act but it (that section) is wholly devoid of guides or standards for the functioning of that agency.

Under section 310 the President has set up the Selective Service System. That System has established camps, assigned to the camps those registrants who have been found, by the procedures provided by the Act, to be exempt from all military service, and promulgated a complete code of laws for the government, during every hour of the day and night, of the conduct of those assignees.

The Act is devoid of guides or standards for the functioning of the agency—machinery—relative to registrants to be assigned in lieu of induction, to work of national importance under civilian direction. *It contains not a word of referring, directly or indirectly, to confinement or detention of conscientious objectors* who have been found exempt from induction. Not a word indicating any intention of Congress that they should be restricted in their liberties in any manner beyond the requirement to perform work of national importance under civilian direction.

THE LAW.

Even prior to the recent decision in *Ex Parte Endo,* 65 S. Ct. 208, to which we shall refer later, two decisions of this Court clearly showed the invalidity of the claimed or attempted delegation of authority in the instant case. They are *A. L. A. Schechter Poultry Corp. et al. vs. United States,* 295 U.S. 495-555, and *Yakus vs. United States,* 321 U.S. 414.

The *Schechter* case involved a conviction for violation of the "Live Poultry Code" promulgated by the President under authority attempted to be delegated to him under and by the National Industrial Recovery Act of June 16, 1933. That act began with a declaration of national emergency as follows:

> "Sec. 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people is hereby declared to exist." (Followed by a long, detailed and specific statement of the objects and purposes for which the act was passed.)

The act set up complete machinery for promulgation of codes by the President to carry out the expressed purposes and accomplish the expressed objects of the act. The code was attacked on the ground of unconstitutional delegation of legislative authority. This court sustained the attack, saying at page 528:

> "We are told that the provision of the statute authorizing the adoption of the codes must be veiwed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. *Extraordinary conditions do not create or enlarge constitutional power.* (Citing Ex Parte Milligan.) The Constitution established a

national government with powers deemed adequate, as they proved to be *both in war and peace,* but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary." (Italics supplied.)

After stating that under Art. 1 sec. 1 of the Constitution "all legislative powers herein granted shall be vested in a Congress of the United States," this Court proceeds (page 529):

> "The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the National Legislature cannot deal directly. We pointed out in the Panama Refining Co. case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicability, which will enable it to perform *its function in laying down policies and establishing standards while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them,* CANNOT BE ALLOWED TO OBSCURE THE LIMITATIONS OF THE AUTHORITY TO DELEGATE, IF OUR CONSTITUTIONAL SYSTEM IS TO BE MAINTAINED." (Emphasis supplied.)

Summarizing its discussion of the subject of delegation of legislative authority, this Court said, at page 541:

> "§ 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact deter-

> mined by appropriate administrative procedure. *Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, sec. 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in sec. 1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President, in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code making authority thus conferred is an unconstitutional delegation of legislative power.*" (Emphasis supplied.)

In *Yakus vs. United States, supra*, the price regulations promulgated by the Office of Price Administration, established by the President under the Emergency Price Control Act, were claimed to be invalid because not within constitutionally delegated powers. The *Schechter* case was distinguished but nowhere questioned the validity of the decision or of the reasoning on which it was based. It is a recognition that the *Schechter* case is still the law. In regard to that case the Court in the *Yakus* case, said at page 424:

> "The Act is unlike the National Industrial Recovery Act of June 16, 1933, considered in A.L.A. Schechter Poultry Corp. vs. United States (citing reports which proclaimed in the broadest terms its purpose 'to rehabilitate industry and to conserve natural resources.' *It prescribed no method of attaining that end save by the establishment of codes* of fair competition, *the nature of whose permissible provisions was left undefined. It provided no standards to which those codes were to conform.*" (Emphasis supplied.)

This Court pointed out that the Act itself expressed ample guides and standards to direct and limit the regulations to be promulgated by the O.P.A. In the early part of the opinion in the paragraph beginning "The standards which are to guide the Administrator's exercise of his au-

thority to fix prices, so far as now relevant, are prescribed in sect. 2,". The Court, at length, recites the standards enumerated in that section. In addition to these specified standards, the Price Control Act contained a long and detailed statement (set forth in the opinion immediately preceding the paragraph last referred to) of the objects and purposes of the Act which, taken together with the standards specified in section 2 constitute a quite complete code for the guidance and government of the O.P.A. The Court further points out that the Price Control Act was passed during the present war (January 30, 1942) and that it is expressly an exercise of the war power of Congress, section 1 declaring that the Act is passed "in the interest of the national defense and security and necessary to the effective prosecution of the present war."

Notwithstanding that the Price Control Act was an express exercise of the war power of Congress this Court bases its finding of validity of the regulations on the fact that the Act does provide guides and standards for the direction and limitation of the O.P.A., in the making of its regulations. It recognizes that had those guides and standards been absent, as they were in the *Schechter* case, the regulations would have been invalid because outside of constitutionally delegated power.

Three things are, therefore, necessary to the validity of codes or regulations promulgated by an administrative agency set up by the Congress. First, the act must state its objects and purposes; second, the agency must be set up to do the administrative work to effectuate such stated purposes; third, guides and standards must be provided in the act for the direction and limitation of the agency in its efforts to effectuate those purposes.

The expressed purposes of the Selective Training and Service Act are to "increase and train the personnel of the armed forces" and to "provide a fair and just system of selective compulsory military training and service," as declared in subsections (a) and (b) of the first section (50 USCA 301).

The Act sets up the Selective Service System to effec-

tuate these declared purposes. It provides guides and standards for the conduct of that agency in carrying out the declared purposes of the Act, namely in the selection of those who are to be inducted, those who are to be deferred and those who are to be exempt from induction. As to conscientious objectors found, by and in accordance with the detailed and carefully guarded prescribed procedures, to be exempt from induction—who are, therefore, outside the declared purposes of the Act—it says only that they shall be assigned to work of national importance under civilian direction.

There is no word or intimation in the Act in the nature of guides or standards for the direction or limitation of the agency which is to do the assigning nor is there a word in the Act regarding the regulation or control of the work nor regarding the governing or controlling of the men on or during the work. There is no intimation anywhere that Congress ever had in mind any regulation or control of these men outside of their working time.

We turn now to the decision of this Court in the case of *Ex Parte Endo,* 65 S. Ct. 208, December 18, 1944, which, we submit, decides the case at bar.

That case holds that the Act and Executive Order authorizing the evacuation of those of Japanese ancestry, from the west coast military area, may have been valid but that the Act and Order were silent as to detention, after such evacuation, of the citizens thus evacuated and, therefore, the orders of the military and of the Relocation Authority for detention of such persons in relocation centers was without delegated authority and was illegal.

The Selective Training and Service Act was valid as to the selection of those who might be inducted into and thereby increase the personnel of the armed forces (the expressed purpose of the Act) but was wholly silent as to detention (or any other control) of conscientious objectors after they had been found exempt from induction.

We respectfully submit that there was no valid delegation of authority for the detention of petitioner in a Civilian

Public Service camp or for the Rules and Regulations promulgated by the Selective Service System to govern him therein and that, therefore, petitioner was guilty of no crime in violating said Rules and Regulations.

A 2.

SAID RULES AND REGULATIONS AND SAID ORDER NO. 111 ARE VOID BECAUSE THEY PROHIBIT AND PENALIZE THAT FREEDOM OF EXERCISE OF RELIGION PROVIDED FOR BY SAID ACT OF 1940 AND, THEREFORE, ARE CONTRARY TO THE ACT AND CONTRARY TO THE FIRST AMENDMENT OF THE CONSTITUTION AND PARTICULARLY THAT CLAUSE THEREOF WHICH GUARANTEES THE FREE EXERCISE OF RELIGION.

The cases of *Arver vs. United States*, 245 U.S. 366, and *United States vs. McIntosh*, 283 U.S. 605, state that the First Amendment does not give a conscientious objector an absolute right of exemption from military service but the McIntosh decision, at page 623, reads as follows:

> "whether any citizen shall be exempt from serving in the armed forces of the nation in time of war is dependent upon the will of Congress and not upon the scruples of the individual, except as Congress provides. *That body thus far, has seen fit, by express enactment, to relieve from the obligation of armed service those persons who belong to the class known as conscientious objectors; and this policy is of such long standing that it is thought by some to be beyond the possibility of alteration.*" (Emphasis added.)

The Court then states that Congress does have the *power* to alter this policy but there is no suggestion that the policy, which has become an American tradition, will be or ought to be changed.

The important point is that this Court says that the exemption of conscientious objectors from military service is a long established national policy, recognized by Congress and the courts, *so that when Congress provided, in the Act of 1940, that conscientious objectors shall "in lieu*

of such induction be assigned to work of national importance under civilian direction'' (emphasis added), *it was not only giving expression to and more firmly establishing that long standing national policy, it was substantially broadening that policy.* This clearly appears from the comparison of the Act of 1940 with the 1917 Draft Act.

The obvious purpose of the Act of 1940 was to guarantee freedom of religion (conscience) to those found (according to the tests specifically provided by Congress in section 5 (g) of the Act) to be genuinely conscientiously opposed to participation in either combatant or noncombatant military service.

An act passed in furtherance of an established public policy is always liberally construed in order to effectuate its purpose. It must not be so construed as to defeat its very object. It must not be construed as providing a punishment for the exercise of the very right which the act itself recognizes and purports to confirm or enlarge.

Even a government itself cannot impose an unlawful or unconstitutional condition upon the grant of a privilege.

U. S. vs. Chicago, M. St. P. & P. R. Co., 282 U. S. 311 at 328.

Frost vs. Railroad Commission, 271 U. S. 583, 593, 594.

Hanover Fire Ins. Co. vs. Carr (Harding), 272 U. S. 494, 507, 508.

This being so, obviously an administrative body cannot impose such a condition on the exercise of a right expressly recognized and accorded by Congress, in the law under which such body is created, in accordance with a long standing national policy. This is especially true in this case where the Act is silent in regard to any such condition.

We submit that the Rules and Regulations and Order in question prohibit and penalize the free exercise of religion provided for in the Act and that said Rules and Regulations and Order are contrary to the provisions of the Act and contrary to the First Amendment and are void.

A 3 and 4

The highest monthly "allowance" to any assignee in the camp was $7.50. The "allowance" ran from that down to $3. The average was $3.67 per month. Some were farmed out at $3 per day out of which the assignee received only 50 cents, the government taking the rest (R. 22).

The assignee had no liberty, his services were appropriated by the government, he was compelled to work when, where and at that kind of work dictated by Selective Service. He had committed no crime.

We submit that the Rules and Regulations and Order which placed petitioner under these conditions and restrictions, deprived petitioner of his liberty and his property, took his property (his labor and earnings) for public use without just compensation, all without due process, contrary to the Fifth Amendment and subjected him to involuntary servitude, not as punishment for crime, contrary to the Thirteenth Amendment, and that said Rules and Regulations and Order were void.

B.

If the Selective Training and Service Act be construed as authorizing the Order No. 111 and the Rules and Regulations, then we submit that the portion of the Act so construed would be in violation of the First, Fifth and Thirteenth Amendments and invalid for the reasons given supra, for unconstitutionality of the Order and Rules and Regulations.

C.

The Act says that the objector shall be assigned to work "under civilian direction."

The Selective Service System is commonly spoken of as a civilian organization but this is not true in fact even if claimed to be in form.

The Local Boards and Appeal Boards are composed of civilians and generally serve without pay. The dominating part of the System is composed largely of military men. That is the part which promulgated the Order, Rules and Regulations and directs and controls the camps. The Local

Boards have nothing to do with the camps except to assign to them men whom they classify as 4E.

It is shown beyond question by the Rules for Government-Operated Camps, by the excerpts from the reports of Congressional committee hearings and General Hershey's Report (R. pp. 24-34), by the directions and instructions issued by the Camp Operations Division (R. pp. 21-22) and by the various other exhibits and documents, that the SSS, and particularly the Camp Operations Division, is a militarily controlled and directed organization and not a civilian organization. The Act itself provides, in section 10 (d) (50 U.S.C.A., sec. 310 (d)), that the Chief of Finance of the United States Army shall be "the fiscal, disbursing, and accounting agent of the Director of Selective Service." The head of the SSS is a major-general in the Army and is paid by the Army (R. P. 32). The head of the Camp Operations Division is an army colonel, and signs his orders and directives pertaining to camp matters and conscientious objectors as "Colonel, Field Artillery" (R. P. 23). There are 139 officers, from the armed forces of the United States, in the Washington headquarters of the SSS, from which the camps are controlled and directed (R. P. 34). It clearly appears from Gen. Hershey's Report (R. P. 33) and at numerous other places in the evidence, that the government of the conscientious objectors in the camps is an absolute military regimentation, promulgated and operated by military men and paralleling the regimentation of the army in every detail, so far as possible.

CONCLUSION.

In conclusion we submit that at the time of petitioner's act for which he stands convicted, he was not under civilian direction, as provided by the Act but was illegally detained under military direction contrary to the provisions of the Act; that the Rules and Regulations, for violation of which petitioner was convicted, were and are void because without legislative delegation of authority to promulgate them, because they imposed illegal conditions upon the exercise of a right expressly recognized or granted by Congress and because they violate the First, Fifth and Thirteenth Amendments to the Constitution.

We accordingly submit that a writ of certiorari should issue as prayed in the Petition and that affirming the conviction of petitioner should be reversed.

Respectfully submitted,

CARLE WHITEHEAD,
Counsel for Petitioner.

ARTHUR A. BROOKS, JR.,
of Counsel.

APPENDIX A.

Executive Order No. 8675

February 6th, 1941

EXECUTIVE ORDER.

Authorizing the Director of Selective Service to Establish or Designate Work of National Importance Under Civilian Direction for Persons Conscientiously Opposed to Combatant and Non-Combatant Service in the Land or Naval Forces of the United States.

By virtue of the authority vested in me by the Selective Training and Service Act of 1940 (Pub. No. 783, 76th Congress), it is hereby ordered as follows:

1. The Director of Selective Service, hereinafter called the Director, is authorized to establish, designate, or determine work of national importance under civilian direction to which may be assigned persons found under section 5 (g) of the Selective Training and Service Act of 1940 to be conscientiously opposed to participation in combatant and noncombatant training and service in the land or naval forces of the United States.

2. The Director shall make the necessary assignments to such work, shall determine the agencies, organizations, or individuals that may provide civilian direction thereof, and shall have general supervision and control over such work.

3. To the extent that he may deem necessary to carry out the provisions of this order, the Director may utilize the services of the Departments, officers and agents of the United States; accept the services of officers and agents of the several states, territories, and the District of Columbia, and the subdivisions thereof; and accept voluntary services of private organizations and individuals; and may obtain, by purchase, loan, or gift, equipment and supplies from Federal and other public agencies and private organizations and individuals, with or without advertising or formal contract.

4. The Director is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this order.

FRANKLIN D. ROOSEVELT.

APPENDIX B.

Selective Service System
(Order 111)

Mancos Project, Colorado

Designation as Work of National Importance

I, Lewis B. Hershey, Director of Selective Service, by virtue of the provisions of the Selective Training and Service Act of 1940 (54 Stat. 885, 50 U. S. C. Supp. 301-318 inclusive); E. O. No. 8675, 6 F. R. 831, O. E. No. 9279, 7 F. R. 10177, and the authority vested in me by the Chairman of the War Manpower Commission under Administrative Order No. 26, 7 F. R. 10512, hereby designate the Mancos Project to be work of national importance to be known as Civilian Public Service Camp No. 111. Said camp, located at Mancos, Montezuma County, Colorado, will be the base of operations for reclamation work in the State of Colorado, and registrants under the Selective Training and Service Act of 1940, who have been classified by their local boards as conscientious objectors to both combatant and non-combatant military service and have been placed in Class IV-E, may be assigned to said camp *in lieu of their induction for military service.*

The work to be undertaken by the men assigned to Civilian Public Service Camp No. 111 will consist of storage dam construction, riprapping, reservoir clearing, canal excavation, forest fire fighting, fire presuppression, and various other allied projects under the *technical direction* of the Bureau of Reclamation of the Department of the Interior. This Bureau will also be responsible for the housing, feeding, clothing, discipline and provision of necessary medical and dental care. Men shall be assigned to and retained in camp in accordance with the provisions of the Selective Training and Service Act of 1940 and regulations and orders

promulgated thereunder. Supervision and control of the Mancos Project shall be under the Selective Service System through the Camp Operations Division of National Selective Service Headquarters.

LEWIS B. HERSHEY, *Director.*

June 25, 1943.

APPENDIX C.

Selective Service System Regulations.

PART 692—RULES FOR GOVERNMENT-OPERATED CAMPS.

ORGANIZATION.

Sec.

692.1 Camp responsibility.
692.2 Camp overhead.

CARE, WELFARE, AND DISCIPLINE OF ASSIGNEES.

692.11 Subsistence.
692.12 Clothing.
692.13 Medical care and hospitalization.
692.14 Welfare and recreation.
692.15 Education.
692.16 Furloughs and liberty.
692.17 Discipline.

WORK PROGRAM.

692.21 Allowable project work.
692.22 Hours of work.
692.23 Assignees in supervisory positions.
692.24 Records and reports.
692.25 Safety program and accident reports.

ORGANIZATION.

692.1 Camp Responsibility. The camp director will be appointed by the technical agency operating the camp. The camp director will be responsible for all phases of camp operations; the work program, including maintenance of the

camp and its environs; the protection of Government property; the maintenance of discipline; and the reception, pay, food, clothing, shelter, recreation, health, education, and welfare of assignees.

692.2 Camp Overhead. Assignees will be relieved from project work and assigned to administrative duties at the camp according to tables prescribed by the Director of Selective Service.

CARE, WELFARE, AND DISCIPLINE OF ASSIGNEES.

692.11 Subsistence. Food will be provided without cost to the assignees. Basically, the ration will be the Army ration and its allowable substitutes as prescribed in AR 30-2210 (March 15, 1940) with such modifications as the Director of Selective Service may prescribe. Standard specifications for food as supplied to the Army or Navy will be applicable to such modifications. Ration-savings privileges may be allowed, the value of the ration being determined monthly by the Director of Selective Service. The mess is the responsibility of the camp director, who will operate the mess under such instructions as to balance, variety, and preparation as the Director of Selective Service may prescribe.

Representatives of the technical agency and of the Director of Selective Service using the camp mess will be charged for meals but not to exceed the value of the camp ration on a monthly basis or more than 25 cents for a single meal.

692.12 Clothing. (a) No uniforms for assignees are prescribed.

(b) Each assignee will be provided with such sufficient and proper clothing to perform his duties as the Director of Selective Service may determine.

692.13 Medical care and hospitalization. (a) The camp director is responsible for the health and medical care of the assignees. The agency operating such camp will provide a physician on a contract basis, whose duties will be to make health and sanitary inspections of men and camp, to

make recommendations for correcting the deficiencies found, to give surgical and medical treatment to assignees, and to make such records and reports as may be required. The technical agency will also make arrangements for the hospitalization of assignees.

(b) All assignees will be inoculated against typhoid and vaccinated against smallpox within 48 hours after reporting to camp. These inoculations and vaccinations will be given by the camp physician. Upon completion, proper notations will be placed in the assignee's record at the camp headquarters. The standards of vaccination and inoculation shall be those prescribed by the Medical Department of the United States Army.

692.14 Welfare and recreation. The welfare and recreation of assignees is the direct responsibility of the camp director. Recreation at the camp in the form of athletics, entertainments, and similar activities is preferred to outside forms of amusement, but a reasonable amount of the latter should also be provided.

Ministers or other recognized representatives of religious organizations having members at the camp, as well as friends and relatives of assignees, should be allowed to visit freely, subject only to such restrictions as the proper operation of the camp or work project may require.

A Chaplain or educational advisor, selected and financed through the National Service Board for Religious Objectors and approved by the Director of Selective Service, is authorized to live at the camp and to assist and supplement the educational, welfare, and recreational program. He may be provided with quarters and subsistence at no greater cost than that paid by the administrative personnel attached to the camp. His activities must have the approval of the camp director, and he must conform to the general rules for the conduct of the camp.

Motor vehicles assigned to the camp may be used to provide transportation of the assignees for educational, recreational, or religious purposes under such rules as the technical agency operating the camp and the Director of Selective Service may prescribe.

692.15 Education. The camp director, under such instructions as the technical agency operating the camp and the Director of Selective Service may prescribe, will be responsible for training in first-aid, health and sanitation, safety, disaster and rescue work, and job training. All technical agency personnel will be available for use in connection with the educational program. All assignees will be required to take part, and the services of qualified assignees will be used.

In addition to the above the camp director should assist and encourage the formation of volunteer classes according to the needs and desires of the assignees.

692.16 Furloughs and liberty. (a) The camp director may grant furloughs to an assignee at such times as he may be spared from his duties. No assignee may receive a furlough or furloughs in excess of a total of 30 days in any one year, including furloughs for special religious holidays and periods of convalescence following illness or injury. Such furloughs shall include week ends and holidays falling within the period of furlough. The camp director may temporarily restrict or suspend the granting of furloughs to any or all men assigned to a project whenever in his opinion circumstances render such restrictions or suspensions desirable. The number of assignees on furlough at any one time will in no event exceed 15 per cent of the total number of assignees in such camps.

(b) Liberty or leave regulations covering the hours outside of work hours may be issued from time to time by the camp director, who may prescribe hours assignees may be away from the camp and how far they may go from camp. Week-end leave must be confined between noon on Saturday and 6 a.m., Monday. A sufficient number of assignees will be maintained at the camp to provide for watchman service and fire protection at all times.

692.17 Discipline. (a) An assignee who fails to perform the duties outlined in section 653.12, or whose conduct amounts to a violation of local, State, or Federal criminal statutes or to a violation of the rules and regulations herein set forth, will be subject to such fines, restrictions of privi-

leges, extra duty, additional service, reclassification under the Selective Service Regulations, or prosecution under the Selective Training and Service Act of 1940, as amended, as the case may warrant.

(b) If an assignee is sought by local, State, or Federal criminal statutes, he will be delivered to the appropriate authority upon proper warrant for his arrest being exhibited to the camp director. The camp director will make a full and immediate report to the Director of Selective Service through regular channels on all such arrests and the disposition thereof. Upon receipt of the full facts concerning such arrests and disposition thereof, the Director of Selective Service will determine whether to submit such information to the assignee's local board with a request that the assignee's case be reopened and his classification considered anew under the Selective Service Regulations.

(c) If an assignee who has reported to his local board for work of national importance pursuant to an Order to Report for Work of National Importance (Form 50) and has been furnished with the necessary instructions and transportation to the camp fails to report to the camp at the time and place designated, he will be carried as absent without leave for 10 days and, unless there is a change in status, will be deemed to be a deserter on the 11th day. Such failure to report to camp will constitute a violation of these regulations and may subject the assignee to prosecution under the Selective Training and Service Act of 1940, as amended. The Director of Selective Service will be notified of such failure to report to camp through the regular channels on the 11th day and may take the necessary action to report the assignee to the proper United States attorney as a violator of the Selective Training and Service Act of 1940, as amended.

(d) If, after reporting to the camp, an assignee is absent without leave for a continuous period of 10 days, he will be deemed a deserter. On the 11th day the Director of Selective Service will be notified through regular channels and may take the necessary steps to report the assignee to the proper United States Attorney as a violator of the Selective Training and Service Act of 1940, as amended.

(e) Refusal to work or perform other assigned duties, inciting others to refuse to work or perform assigned duties, or failure to abide by the rules and regulations promulgated by the camp director, will constitute a violation of these rules and regulations. A full and immediate report of such violation of these rules and regulations will be made to the Director of Selective Service through regular channels. If the reported conduct indicates that the assignee may have been improperly classified, the Director of Selective Service may take the necessary steps to submit the information to the assignee's local board with a request that the assignee's case be reopened and his classification considered anew under the Selective Service regulations. The Director of Selective Service may also report the assignee to the proper United States attorney as a violator of the Selective Training and Service Act of 1940, as amended.

(f) Loss of time over 24 hours because of the assignee's absence without leave, sickness or injury due to his own misconduct, confinement by civil authorities followed by conviction, or willful failure to perform duties, must be made up, provided that no assignee may be retained in camp longer than the maximum period of service as prescribed by law.

(g) Subject to such restrictions as may be hereinafter imposed, the camp director has the following punitive powers which he may exercise singly or in combination:

(1) Admonition.

(2) Reprimand.

(3) Suspension of privileges for not to exceed 1 week for any one offense.

(4) Assignment of extra work within the camp on nonworking days but not in excess of 8 hours per day for 2 such days for any one offense.

(5) Reduction of assignee-foreman.

(6) Forfeiture of cash allowance but not less than 50 cents or not more than 50 per cent of monthly allowance in multiples of 25 cents in any one

month, subject to approval of the Director of Selective Service.

(7) Cancellation of furlough privileges, not to exceed more than 20 days in any 12-month period, subject to approval of the Director of Selective Service.

(8) Imposition of additional service, not to exceed more than 40 days in any 12-month period, subject to approval of the Director of Selective Service.

(9) Take action as prescribed under (b) through (f) of this section.

(h) Table of offenses and appropriate punishments:

OFFENSE.	Punishment may be singly or in combination. Letters refer to (1) through (9) of (g) of this section.
(1) Minor infractions of camp or work project rules or these regulations.	(1), (2), (3).
(2) Infraction of rules or regulations.	(1), (2), (3), (4), (5), (6), (7), but not to exceed $1 under (6) or more than 2 days under (7) for any one offense.
(3) Inexcusable failure to perform assigned duties.	(1), (2), (3), (4), (5), (6), (7), (8), but not both (7) and (8) or not to exceed 2 days for each day or fraction thereof on which duties were not performed or for each infraction of the regulations.
(4) Refusal to perform duties, insubordination, disorderly or disgraceful conduct in or out of camp, refusal to obey a lawful order.	(1), (2), (3), (4), (5), (6), (7), (8), but not to exceed a total of 10 days under (7) and (8) for any one offense. May be applied singly or in combination.

(5) Absent without leave	(1), (2), (3), (4), (5), (6), (7), (8), but not to exceed 50 cents for each day of absence or a total of 50 per cent of allowance under (6). Not to exceed 1 day for each day of absence or a total of 10 days under (7) and (8) which may be applied singly or in combination. If absence is for over 24 hours, the provisions of (f) of this section mandatory.
(6) Continued or serious misconduct.	(6), (7), (8), (9). Any one or combination of (6), (7), and (8) subject to the limitations set forth, or (9) when offense is very serious or there has been two or more previous punishments covered by records of hearing.
(7) Persistent refusal to work or perform other assigned duties, or inciting others to refuse to work or perform other assigned duties.	(9).
(8) Failure to report to camp or desertion.	(9).
(9) Violation of criminal statutes, local, State, or Federal.	(9).

(i) The following disciplinary records will be required:

(1) When the punishment for an offense falls within (1), (2), (3), (4), or (5) of (g) of this section, a record of hearing is not required unless requested by the assignee. Such punishments will be entered and initialed by the camp director in a Camp Punishment Book. Such entry will show

the date and nature of the offense, and date and nature of punishment.

(2) With the exception of the offenses committed under (b), (c), or (d) of this section, a record of hearing must be made when the offense is of such a serious nature that the offender, if found guilty, would be subject to punishment under (6), (7), (8), or (9) of (g) of this section. The accused shall have a right to be informed of the charge, choose counsel from the available assignees or technical personnel, question witnesses, make a statement in his own behalf, call any reasonably available witness, and appeal the decision of the camp director to the Director of Selective Service in writing within 10 days of the imposition of punishment. However, he may not refuse to undergo the punishment pending the outcome of an appeal.

(3) Records of hearing are subject to review and approval by the Director of Selective Service who may decrease but not increase a penalty.

WORK PROGRAM.

692.21 Allowable project work. An assignee at a camp may be employed on any authorized work of the technical agency involved in the work program of the camp. Work priority shall be determined by such technical agency.

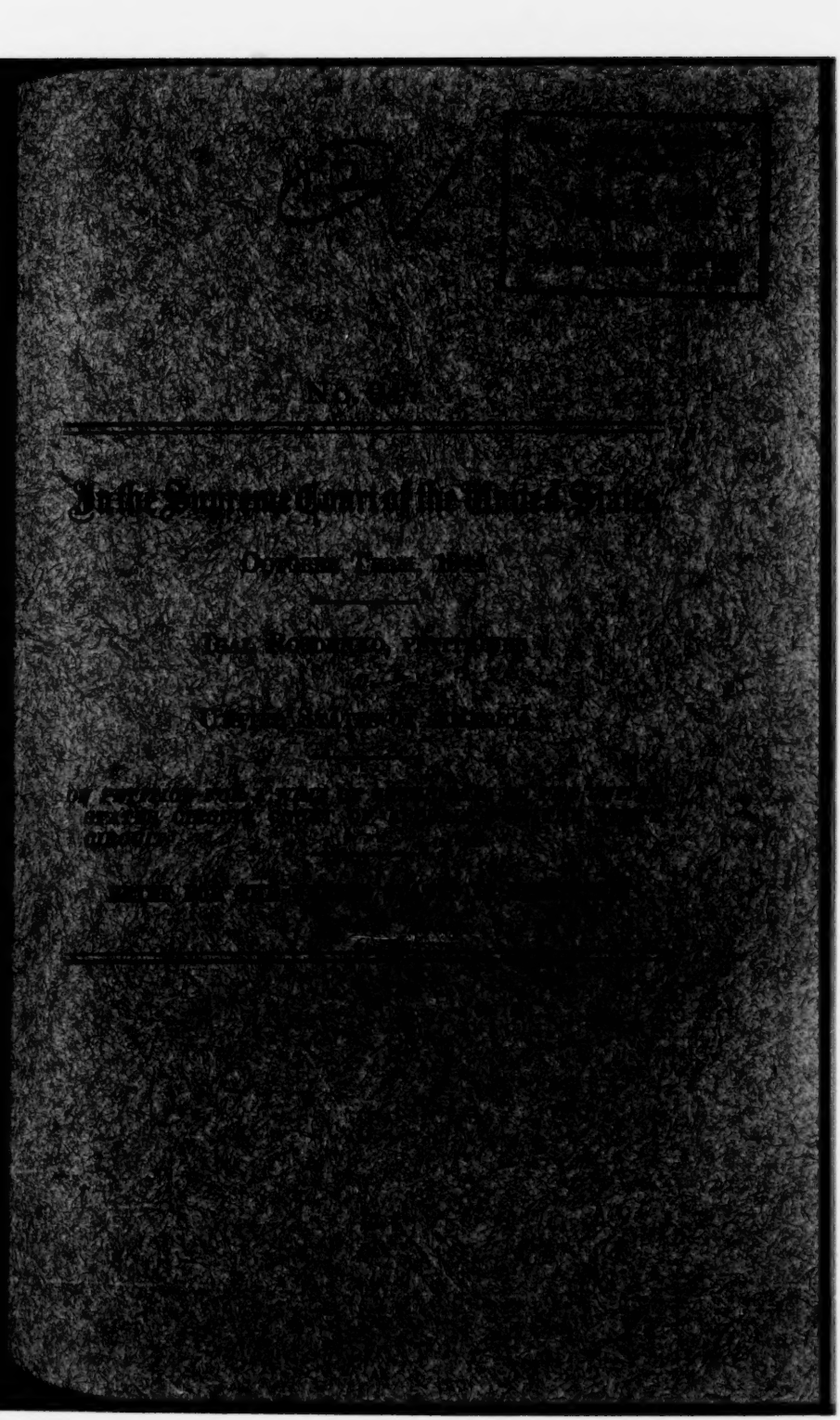
692.22 Hours of work. The hours of work on the project will be determined by the technical agency. No limitation is set on the number of hours that an assignee may be required to work in any given day or week. Forty-four hours per week shall be the minimum that any assignee shall work. Travel time shall not be included in computing the 44-hour minimum except the portion thereof which exceeds 1 hour in any one day. Assignees will be subject to emergency calls by the camp director on any day or night at any hour for the purpose of fighting forest fires or other emergencies affecting life or property.

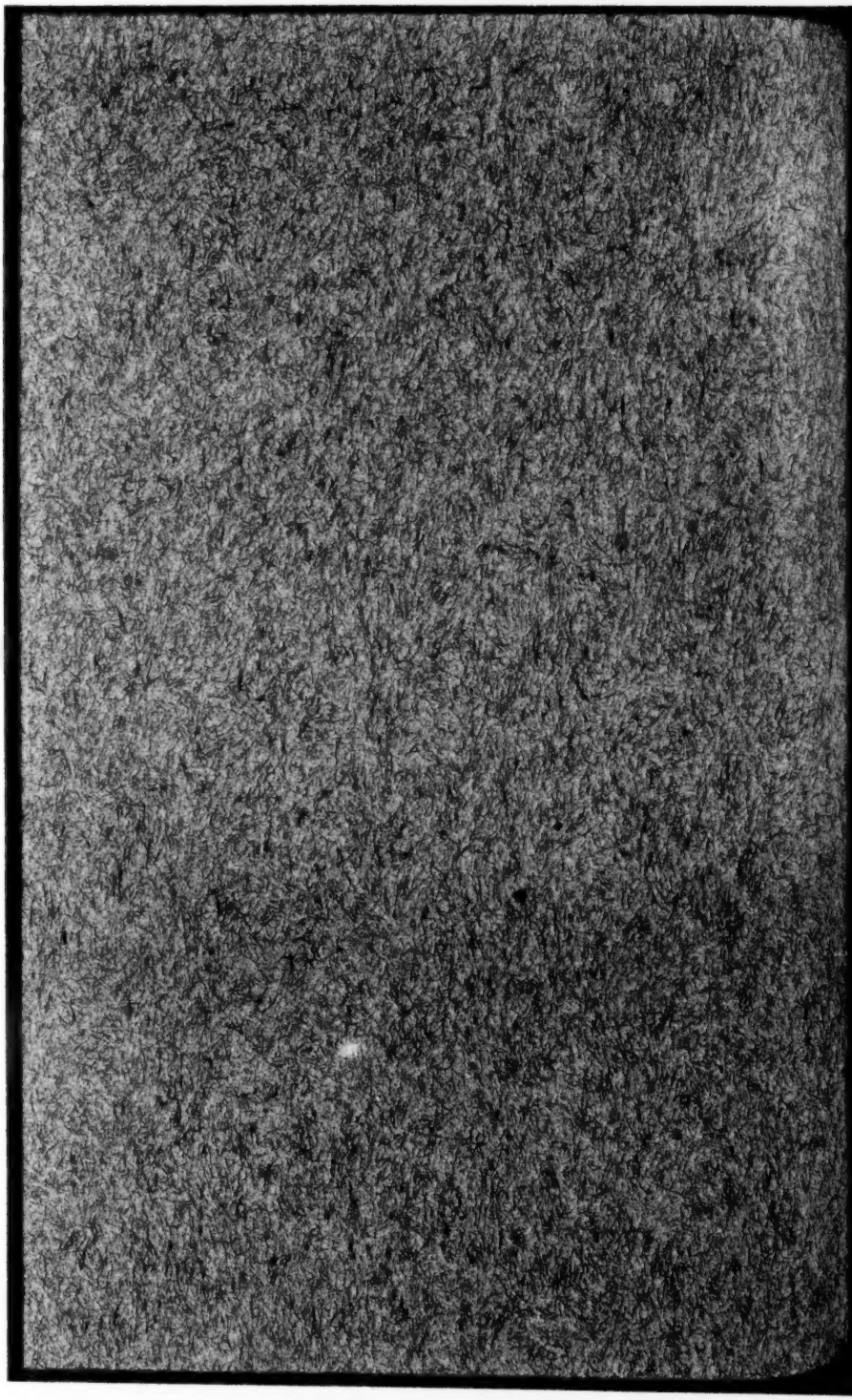
692.23 Assignees in supervisory positions. The designation of assignees for supervisory positions shall be made by the camp director. The method of designation, number authorized, rates of pay, duties, authority, and titles of such

assignees shall be prescribed by the Director of Selective Service.

692.24 Records and reports. The camp director will be responsible for the preparation and forwarding of such records and reports governing the operation of the camp as may be required from time to time by either the technical agency operating the camp or by the Director of Selective Service. Normally, these reports will be through the regular channels of such technical agency with such exceptions as the Director of Selective Service may find necessary.

692.25 Safety program and accident reports. The applicable provisions of the Safety Manual now in use by the Civilian Conservation Corps with such modifications and additions as the Director of Selective Service may prescribe shall be used in the safety program. Duties and responsibilities assigned to the Company Commander or Camp Superintendent under the Civilian Conservation Corps set-up are combined in the camp director who is responsible for the safety program. A safety committee composed of the camp director, the two chief administrative assistants, the camp physician, and one assignee will be organized in lieu of that provided for in the Civilian Conservation Corps but with the same duties and responsibilities. The Director of Selective Service will be substituted for Director, Civilian Conservation Corps, and, unless specifically stated, only those reports forwarded through the technical agency will be used.





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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 947

IGAL ROODENKO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 79–85) is not yet reported. The memorandum opinion of the district court (R. 7–15) is reported at 55 F. Supp. 648.

JURISDICTION

The judgment of the circuit court of appeals was entered December 22, 1944 (R. 85). A petition for rehearing (R. 87, 91–101) was denied January 9, 1945 (R. 102). The petition for a writ of certiorari was filed February 13, 1945. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether Section 5 (g) of the Selective Training and Service Act of 1940, and the Selective Service Regulations issued thereunder, requiring assignment of conscientious objectors to both combatant and noncombatant military service to work of national importance under civilian direction, are constitutional.

2. Whether the work to which petitioner was assigned was under civilian direction.

STATUTE AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations are set forth in the Appendix, *infra*, pp. 19–26.

STATEMENT

On November 24, 1943, petitioner was charged in a one count indictment (R. 1–3) filed in the United States District Court for the District of Colorado with violation of Section 11 of the Selective Training and Service Act of 1940. The indictment alleged that, having been classified IV–E and having been assigned to a Civilian Public Service Camp, petitioner wilfully failed and refused to perform the duties assigned to him by the director of the camp, as required by the Selective Training and Service Act of 1940

and the Selective Service Regulations issued thereunder.

It was stipulated between the parties that the facts set forth in the indictment were true (R. 19–20). Those facts are that petitioner was classified IV–E (conscientious objector to combatant and non-combatant military service) by his local board and was thereafter directed to report for work of national importance. He reported on February 9, 1943, and entered Civilian Public Service Camp No. 52, Powellsville, Maryland. Thereafter, on July 8, 1943, he was transferred to Civilian Public Service Camp No. 111, Mancos, Colorado. After he had been in the camp for several months and apparently had fully performed his duties, petitioner, during the period from October 28 to November 5, 1943, refused to perform the duties assigned to him by the director of the camp. (R. 2.) It appears from a letter written by petitioner to the director of the camp after he had been indicted in the present case that petitioner went on a "hunger and work-strike" and that he did so solely "in protest against existing censorship conditions in the federal prison system." Petitioner expressly stated that his conduct was not motivated by his personal status or conditions at the camp. He also sought permission from the director of the camp to return to the camp until his case was called for trial. (R. 36–37.)

The director of the camp, Charles F. Thomas, testified that Civilian Public Service Camp No. 111 formerly was a Civilian Conservation Corps camp and that it was established as a camp for conscientious objectors by Order No. 111 of the Director of Selective Service. That order (8 Fed. Reg. 8988) provides, in part, that:

> The work to be undertaken by the men assigned to Civilian Public Service Camp No. 111 will consist of storage dam construction, riprapping, reservoir clearing, canal excavation, forest fire fighting, fire presuppression, and various other allied projects under the technical direction of the Bureau of Reclamation of the Department of the Interior. This Bureau will also be responsible for the housing, feeding, clothing, discipline and provision of necessary medical and dental care. Men shall be assigned to and retained in camp in accordance with the provisions of the Selective Training and Service Act of 1940 and regulations and orders promulgated thereunder. Supervision and control of the Mancos Project shall be under the Selective Service System through the Camp Operations Division of National Selective Service Headquarters.

Thomas testified that the work of the camp and its operations were as set forth in Order No. 111 and that he is an employee of the Bureau of Reclamation, paid by that agency; that registrants assigned to the camp live in barracks, eat in mess

halls, and are furnished clothing of a more or less uniform type and quality "equal to that furnished men in the Army;" that there were no Army personnel and no armed guards stationed at the camp and that Army discipline was not maintained; that one representative of the Selective Service System who inspected the camp appeared in military uniform and that when Thomas had conferred with the Director of the Selective Service System and the Chief of the Camp Operations Division, both of these officials were in military uniform. (R. 20–23.)

On this evidence, having waived a jury trial (R. 5), petitioner was found guilty by the court and sentenced to imprisonment for a term of three years (R. 15). Upon appeal to the Circuit Court of Appeals for the Tenth Circuit, the judgment of the district court was affirmed (R. 86–87.)

ARGUMENT

1. Relying on the First, Fifth, and Thirteenth Amendments and the alleged unlawful delegation of legislative power, petitioner, as his principal ground for certiorari, challenges the constitutionality of Section 5 (g) of the Selective Training and Service Act and the Regulations issued thereunder (Pet. 6–7, 9–18). The very same contentions were unsucessfully pressed upon this Court in *Gormly* v. *United States,* No. 220, October Term, 1943, certiorari denied, 320 U. S. 753, and have been uniformly rejected in the lower federal courts.

Weightman v. *United States,* 142 F. 2d 188 (C. C. A. 1); *Brooks* v. *United States,* No. 189, decided February 2, 1945 (C. C. A. 2); *United States ex rel. Zucker* v. *Osborne,* No. 192, decided February 2, 1945 (C. C. A. 2); *Heflin* v. *Sanford,* 142 F. 2d 798 (C. C. A. 5); *Kramer* v. *United States,* No. 9812, decided February 8, 1945 (C. C. A. 6); *Rase* v. *United States,* 129 F. 2d 204 (C. C. A. 6); *United States* v. *Van Den Berg,* 139 F. 2d 654 (C. C. A. 7); *Hopper* v. *United States,* 142 F. 2d 181 (C. C. A. 9).

For the convenience of the Court we reiterate the considerations which sustain the constitutional validity of Section 5 (g) and the regulations thereunder:

Once it is recognized, as we submit it must be, that military service may be required regardless of personal feelings and religious beliefs and does not constitute involuntary servitude,[1] and that exemption from such service is solely within the discretion of Congress,[2] the error of petitioner's contention becomes apparent. A provision for assigning conscientious objectors to work of national importance is a necessary and proper ad-

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[1] *Selective Draft Law Cases,* 245 U. S. 366; *Jones* v. *Perkins,* 245 U. S. 390, *Angelus* v. *Sullivan,* 246 Fed. 54, 59–60 (C. C. A. 2); *United States* v. *Sugar,* 243 Fed. 423, 428 (E. D. Mich.); see *Jacobson* v. *Massachusetts,* 197 U. S. 11, 29.

[2] *United States* v. *MacIntosh,* 283 U. S. 605, 622; *Rase* v. *United States,* 129 F. 2d. 204, 210 (C. C. A. 6); *Hamilton* v. *Regents,* 293 U. S. 245, 263–264.

junct to the execution of the power to wage war and raise armies. This is convincingly demonstrated by the nature of the problems faced by the nation while at war, both in 1917–1918 and at the present time.

The Selective Draft Act of 1917 exempted conscientious objectors only from combatant service,[3] and the Army experienced serious difficulty in handling conscripts who were opposed even to noncombatant service. The Furlough Law of March 16, 1918,[4] made it possible for such conscientious objectors to be furloughed to engage in work under civilian direction. Theretofore, and even thereafter in the case of his failure to avail himself of a furlough, a conscientious objector who refused to perform noncombatant military service was subject to punishment by the military authorities.[5] The presence of such persons in the Army presented a problem of discipline and morale.

The experience of the first world war showed the propriety of making a different provision for registrants opposed by reason of religious training and belief to noncombatant as well as to combatant military service. To relieve them entirely

[3] Act of May 18, 1917, c. 15, sec. 4, 40 Stat. 76, 78–79 (50 U. S. C. App. 204).

[4] Act of March 16, 1918, c. 23, 40 Stat. 450.

[5] See *Statement Concerning the Treatment of Conscientious Objectors in the Army* (June 18, 1919), prepared and published by direction of the Secretary of War.

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of any obligation to render any service would obviously not accord with the principle of equality upon which the Selective Training and Service Act of 1940 is based.[6] The problem was resolved by providing for their compulsory assignment to work of national importance, under civilian direction.[7] As conscription of conscientious

[6] Section 1 (b) (50 U. S. C. App. 301b) provides: "The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service."

[7] By virtue of the authority vested in him by the Act, the President authorized the Director of Selective Service to designate or establish work of national importance. Executive Order No. 8675 (Feb. 6, 1941), 6 Fed. Reg. 831–832. In turn the Director has so designated certain camp projects, including the one at Mancos, Colorado, to which petitioner was assigned and the majority of these camps are managed, subject to the direction of the Director of Selective Service, by the National Service Board for Religious Objectors, a private organization representing various religious groups; others, including the camp to which petitioner was assigned, are government operated. The actual work project in each camp is under the direction of technical agencies such as the United States Departments of Agriculture and the Interior. Overall authority and responsibility is vested in the Director of Selective Service, who has prescribed regulations for the operation and goverance of the camps. 6 Fed. Reg. 2001–2003 (April 11, 1941); 32 C. F. R., 1941 Supp. 653.1–23 (see Pet. 23–32). In addition to work in camps conscientious objectors are assigned to work in hospitals, training schools for boys, agriculture experiment stations and various state and federal government agencies. For an extensive statement of the nature of the camps, the control exercised over them, their work, and the participation of the various religious organizations in their operation, see the annual reports of the Director of Selective Service, *Selective Service in Peacetime*, pp. 187–201, and *Selective Service in Wartime*, pp. 255–272.

objectors for military service is within congressional power, their assignment to work analogous to noncombatant service in the armed forces, but under civilian direction to avoid offending their consciences, is clearly within congressional power. Congress has not, as petitioner contends (Pet. 17), annexed an unconstitutional condition to a privilege, but has provided for a draft of manpower for two different purposes: service in the armed forces, and work of national importance of a nonmilitary character. The line between the two is drawn in part on the basis of the individual registrant's usefulness. Congress has regarded men over forty-five as less useful for the present in military than in nonmilitary service. It has likewise so regarded conscientious objectors, whose mental attitude sufficiently impairs their military usefulness to render their induction into military service unnecessary in the nation's interest if another form of service can be found for them in lieu thereof. That petitioner would be in military service apart from the single circumstance of his being a conscientious objector, is a sufficient basis for his being treated differently from those allowed to remain in civilian life for other reasons.

Rather than interfering with the free exercise of religion, as petitioner contends (Pet. 16–17), the Act and Regulations, we believe, manifest a desire both on the part of Congress and the Selective Service System to permit the free exercise of religion, but in a manner which considers the

needs of a nation waging total war. Contrary to petitioner's view (Pet. 14–16), we perceive no reason why in administering the Act, the Director of Selective Service may not place conscientious objectors in work of national importance by requiring them to report to Civilian Public Service Camps for such work. In fact, sound policy requires that persons excused from military service because of their conscientious objections should be treated much the same as persons serving in the military forces, at least to the extent that such treatment does not conflict with their conscientious objections.[8] If it so desired, Congress might have exempted conscientious objectors from all service, as it did ministers of religion, but it was not required to do so as petitioner seems to assume. Its refusal to do so shows that Congress sought to grant conscientious objectors opportunity to serve the nation too, but in a manner not inconsistent with their religious beliefs. As we have shown, supra, p. 8, the Director of Selective Service has relied on various religious groups in the country for voluntary aid in the operation of the

[8] Thomas, the camp director, testified (R. 22) that registrants assigned to the camp who volunteered to do so were "farmed out" to assist farmers in the vicinity of the camp. We are advised by the Selective Service System that provision is made for placing such registrants on "detached service" and that of the 7,000 assignees in Civilian Public Service Camps, almost 3,000 have declined to leave the camps to work either in various state and national government agencies, or for farmers or in other activities essential to the national welfare and consistent with their religious beliefs.

Civilian Public Service Camps, a step which goes far in securing the free exercise of the religious convictions which forbid participation in war.

We think that petitioner's reliance (Pet. 15) on *Ex parte Endo,* No. 70, decided December 18, 1944, is misplaced. That this case is completely dissimilar factually from the situation with which the Court was there concerned is manifest once it is recognized that performance of work of national importance is a congressional grant of which conscientious objectors may avail themselves only in lieu of military service.

Against the challenge of unconstitutional delegation of legislative power, both the Selective Draft Act of 1917 [9] and the present Act [10] have already been sustained. Delegation to the President as Commander in Chief has at least as strong a basis as the broad delegation to him of the power of laying an embargo on the export of arms, which was sustained in *United States* v. *Curtiss-Wright Export Corp.,* 299 U. S. 304, 314–329, without reference to ordinary principles of delegation, for the reason that the matter was

[9] *Selective Draft Law Cases,* 245 U. S. 366, 389; *United States ex rel. Bergdoll* v. *Drum,* 107 F. 2d 897, 901 (C. C. A. 2); *Angelus* v. *Sullivan,* 246 Fed. 54, 60 (C. C. A. 2); *Franke* v. *Murray,* 248 Fed. 865, 869 (C. C. A. 8); *United States* v. *Sugar,* 243 Fed. 423, 434 (E. D. Mich.). Section 4 of the 1917 Act (50 U. S. C. App. 204) provided that conscientious objectors "shall not be exempted from service in any capacity that the President shall declare to be noncombatant."

[10] *Seele* v. *United States,* 133 F. 2d 1015, 1019–1020 (C. C. A. 8); *Weightman* v. *United States,* 142 F. 2d 188 (C. C. A. 1).

one of foreign relations over which the President has an independent constitutional authority. Petitioner's contention of unconstitutional delegation proceeds upon the premise that Congress has not established a standard for the administrative treatment of conscientious objectors. To the contrary, however, Section 5 (g) of the Act specifically provides that a conscientious objector found to be opposed to combatant and noncombatant military service, shall, in lieu of induction into the armed forces, be "assigned to work of national importance under civilian direction." This, we submit, is an adequate standard; the administrative detail concerning the accomplishment of the congressional directive is appropriately left to the discretion of the President and his delegates.[11]

2. Petitioner also contends (Pet. 18–19) that the work which he was directed to perform at Civilian Public Service Camp No. 111 was not to be performed under "civilian direction," as required by Section 5 (g) of the Act. While it is true that among the many persons concerned with the operation of Civilian Public Service Camps some are members of the armed forces on detached service,[12] we believe that the fact that the camp

[11] *Currin* v. *Wallace*, 306 U. S. 1, 17; *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126, 144; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 574; *United States* v. *Grimaud*, 220 U. S. 506, 516.

[12] General Hershey, the Director of Selective Service, was detached from the War Department and assigned to the Selective Service System on September 30, 1940, by War Department Special Order 231.

was under the immediate direction of a civilian and that the ultimate responsibility for the camp rested in a civilian, the Chairman of the War Manpower Commission, shows that the camp was under civilian direction within the meaning of Section 5 (g).

Pursuant to the authority contained in Section 10 of the Act, the President by Executive Order 8675 (6 Fed. Reg. 831) authorized the Director of Selective Service to (1) establish, designate, or determine work of national importance under civilian direction; (2) to make the necessary assignments to such work; (3) to determine the agencies, organizations or individuals that may provide civilian direction thereof; (4) to have general supervision and control over such work; and (5) to prescribe the rules and regulations necessary to carry out the provisions of the Executive Order. This authority was subsequently transferred to the War Manpower Commission, and supervision of the Selective Service functions was lodged in the Chairman of the Commission, a civilian, who was responsible for these functions during the period involved in this case (Executive Order 9279, 7 Fed. Reg. 10177). These duties were subdelegated to General Hershey by the Chairman by Administrative Order No. 26 (7 Fed. Reg. 10512), but General Hershey's activities were subject to the supervision of the Executive Director of the War Manpower Commission who also was a civilian. General Hershey had established a

Camp Operations Division in the Selective Service System to assist him in the administration of the Civilian Public Service Camps. These agencies bore the responsibility for the over-all operation of the system of Civilian Public Service Camps at the time of petitioner's offense.

At the camp level, the immediate direction is lodged in a camp director. In government operated camps, such as the one to which petitioner was assigned, the director is a civilian employee of the technical agency concerned with the camp project. Thus, in this case, the camp director was an employee of the Bureau of Reclamation. As we have shown, *supra,* pp. 4–5, he was in direct charge of the camp and the assignees in it; he determined which assignees might be allowed to leave the camp on "detached service;" he exercised discretion in administering punishment for breach of the camp regulations and, in general, he ran the camp. Military personnel was not stationed at the camp and military discipline was not maintained (R. 23).

Preliminary to considering the merits of petitioner's contention, it may be noted that the legal issue presented here is substantially different from that before this Court in *Giese* v. *United States,* No. 192, this Term, affirmed by an equally divided Court on January 8, 1945. In that case the question related to Section 10 (a) (2) of the Act, which formerly required that "agencies of appeal," among other agencies of the Selective

Service System, should not be composed of members of the armed forces. In this case the question relates to Section 5 (g), which requires that work of national importance shall be under civilian direction, but which, unlike Section 10 (a) (2), does not provide in terms that members of the armed forces may not participate in the performance of that function.

Petitioner's contention in essence is that the participation of any members of the armed forces in the over-all administration of Civilian Public Service Camps converts what would otherwise be civilian direction into something other than that. In evaluating this position the following factors must be considered. Section 10 (b) of the Act authorizes the President to delegate his functions under the Act, and Section 10 (a) (3) permits him to delegate to officers of the armed forces. While this latter provision expressly provides that a delegation to a military officer may not be made in respect of positions on local boards, appeal boards and, formerly, agencies of appeal, no such limitation is expressed in respect of using the services of qualified officers of the armed forces in the administration of the provisions relating to conscientious objectors.[13]

[13] Section 10 (b) of the Act was amended by the Act of December 5, 1943, 57 Stat. 596, to provide that the President could delegate his authority only to the Director of Selective Service. While the amendment was subsequent to the offense charged in the indictment in this case, it evidences a congressional desire that selective service functions be lodged either

The administration of the camps is essentially a civilian function. Military jurisdiction over them does not exist and those members of the armed forces who participate in the administration of the camps participate only as staff members of National Headquarters of the Selective Service System and not as representatives of the War Department, or as local directors of the camps. That the Selective Service System is a civilian agency despite the fact that part of its staff consists of military personnel seems plain. Many agencies of the Government performing functions bearing relation to the war effort have on their staffs some military personnel assigned to those agencies, yet it has never been thought that those agencies are not agencies of the civil side of the Government. Thus, persons in uniform but serving in the administration of the camp system are not performing military services; their activities are civilian in character. Cf. *Southern Pacific Co.* v. *United States,* 285 U. S. 240, 245–246; 29 Op. A. G. 298.

The meager legislative history of the civilian direction provision of Section 5 (g) shows that it was inserted into the Burke-Wadsworth bill by the Military Affairs Committee of the House. A representative of the Society of Friends explained to the Committee that the provision which be-

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in the President or General Hershey, the Director of Selective Service.

came Section 5 (g) was a compromise worked out between the various religious organizations and representatives of the Government, whereby a conscientious objector would be accorded a hearing by the Department of Justice and supervision of him would be "in the hands of the War Department."[14] Hearings before the House Committee on Military Affairs, 76th Cong., 3rd sess., Vol. 1, p. 206.

The decision of the court below on this issue accords with that of the circuit court of appeals for the Sixth Circuit in *Kramer* v. *United States,* No. 9812, decided February 8, 1945, which, to our knowledge, is the only other opinion dealing with this question. A copy of the opinion has been lodged with the Clerk.[15]

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[14] It appears that at the time this statement was made the Selective Service System had not yet been established and the persons to whom the witness referred were officers representing the War Department who are now assigned to the Selective Service System.

[15] The foregoing discussion assumes that petitioner's contention is open to him as a defense to a criminal prosecution under Section 11 for violation of the Selective Service Regulations. Without discussing all the possible ramifications of the question, the unequivocal penalization by Section 11 of a willful disobedience of the regulations suggests that it is arguable that a contention that a Civilian Public Service Camp to which a registrant is assigned is, contrary to the statute, not administered under civilian direction, is one which should be raised on habaes corpus; that until the regulations have, in some orderly fashion, been held contrary to the statutory authorization, a registrant may not willfully take it upon himself to refuse to comply with such regula-

3. Any doubt as to the lack of merit in petitioner's contentions that Congress has not authorized the Civilian Public Service Camp Program as administered by the Selective Service System is dispelled by ratifying legislation by Congress. From the inception of the Civilian Public Service Camp Program Congress has been apprised of the fact that conscientious objectors to both combatant and noncombatant military service are assigned to Civilian Public Service Camps; it has been informed of the nature of the work done at these camps; and it has been advised of the part played by General Hershey and other officers in the administration of the camp system. With this knowledge Congress in appropriations for the Selective Service System has provided that such amounts as may be necessary may be used for the administration of the program of work of national importance under civilian direction.[16]

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tions and then be permitted in the resultant criminal proceeding to excuse his disobedience by asserting that the regulations should, under the statute, have been promulgated by someone else.

[16] See Hearings on H. R. 2788, Subcommittee of the Committee on Appropriations, House of Representatives, 77th Cong., 1st sess., pp. 824, 833, 834, 836, 838, 839; Act of April 5, 1941, 55 Stat. 92, 116; Hearings on H. R. 6430 before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Cong., 2d sess., pp. 438, 440; Act of June 27, 1942, 56 Stat. 392, 415; Hearings on H. R. 82 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess., pp. 125–126, 149–150; Act of March

CONCLUSION

For the reasons stated we respectfully submit that the petition for a writ of certiorari should be denied.

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2, 1943, 57 Stat. 4; Hearings on H. R. 2935 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Congress, 1st sess., pp. 221, 253, 265–267; Act of July 12, 1943, 57 Stat. 494, 518; Hearings on H. R. 2996 before the Subcommittee of the Committee on Appropriations, United States Senate, 78th Cong., 1st sess., pp. 194–202; Act of July 1, 1943, 57 Stat. 347, 350; Hearings on H. R. 4879 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 2d sess., pp. 337–338, 363, 365–366, 380–394; Act of June 28, 1944, Pub. Law No. 372; see also, Hearing on S. 2708, Subcommittee of the Committee on Military Affairs, United States Senate, 77th Cong., 2d sess., pp. 2–28; Hearing on S. 315 and S. 675, Committee on Military Affairs, United States Senate, 78th Cong., 1st sess., pp. 13–23.

APPENDIX

The Selective Training and Service Act of 1940, as amended, 54 Stat. 885 (50 U. S. C. appendix 301–318) provided in part, as follows:

SEC. 5. * * *

(g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. Any such person claiming such exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board provided for in section 10 (a) (2). Upon the filing of such appeal with the appeal board, the appeal board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof. After appro-

priate inquiry by such agency, a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board (1) that if the objector is inducted into the land or naval forces under this Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall give consideration to but shall not be bound to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

* * * * *

SEC. 10 (a). The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System, and shall provide for the

classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe. Ap-

peal boards and agencies of appeal within the Selective Service System shall be composed of civilians who are citizens of the United States. No person who is an officer, member, agent, or employee of the Selective Service System, or of any such local or appeal board or other agency, shall be excepted from registration, or deferred from training and service, as provided for in this Act, by reason of his status as such officer, member, agent, or employee;

(3) to appoint by and with the advice and consent of the Senate, and fix the compensation of at a rate not in excess of $10,000 per annum, of a Director of Selective Service who shall be directly responsible to him and to appoint and fix the compensation of such other officers, agents, and employees as he may deem necessary to carry out the provisions of this Act: *Provided,* That any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any reserve component thereof or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this Act (except to offices or positions on local boards, appeal boards, or agencies of appeal established or created pursuant to section 10 (a) (2)) may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Army, Navy, Marine Corps, or Coast Guard or reserve component thereof, or as such officer or employee in any department or agency of the United States: *Provided further,* That any person so appointed, assigned or detailed to a position the compensation in

respect of which is at a rate in excess of $5,000 per annum shall be appointed, assigned or detailed by and with the advice and consent of the Senate * * *.

(b) The President is further authorized, under such rules and regulations as he may prescribe, to delegate and provide for the delegation of any authority vested in him under this Act to such officers, agents, or persons as he may designate or appoint for such purpose or as may be designated or appointed for such purpose pursuant to such rules and regulations as he may prescribe.

* * * * *

SEC. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the

requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act.

* * * * *

The Selective Service Regulations provided in pertinent part:

ASSIGNMENT TO WORK OF NATIONAL IMPORTANCE

* * * * *

652.14 *Period of service.*—(a) A registrant in Class IV–E who has been assigned

to a camp shall be engaged in work of national importance under civilian direction during the existence of any war in which the United States is engaged and during the 6 months immediately following the termination of any such war, unless sooner released under the same conditions as pertain in the armed forces.

* * * * *

653.1 *Work projects.*—(a) The Director of Selective Service is authorized to establish, designate, or determine work of national importance under civilian direction. He may establish, designate, or determine, by an appropriate order, projects which he deems to be work of national importance. Such projects will be identified by number and may be referred to as "civilian public service camps."

(b) Each work project will be under the civilian direction of the United States Department of Agriculture, United States Department of the Interior, or such other Federal, State, or local governmental or private agency as may be designated by the Director of Selective Service. Each such agency will hereinafter be referred to as the "technical agency."

(c) The responsibility and authority for supervision and control over all work projects is vested in the Director of Selective Service.

653.2 *Camps.*—(a) The Director of Selective Service may arrange for the establishment of a camp at any project designated as work of national importance under civilian direction.

(b) Government-operated camps may be established in which the work of national importance and camp operations will both

be under the civilian direction of a Federal technical agency using funds provided by the Selective Service System and operating under such camp rules as may be prescribed by the Director of Selective Service.

(c) The Director of Selective Service may authorize the National Service Board for Religious Objectors, a voluntary unincorporated association of religious organizations, to operate camps. The work project for assignees of such camps will be under the civilian direction of a technical agency. Such camps and work projects shall be operated under such camp rules as may be prescribed by the Director of Selective Service.

* * * * *

ASSIGNEES

653.12 *Duties.*—Assignees shall report to the camp to which they are assigned; remain therein until released or transferred elsewhere by proper authority, except when performing assigned duties or on authorized missions or leave outside of camp; perform their assigned duties promptly and efficiently; keep their persons, clothing, equipment, and quarters neat and clean; conserve and protect Government property; conduct themselves both in and outside of the camp so as to bring no discredit to the individual or the organization; and comply with such camp rules as may be prescribed or such directions as may be issued from time to time by the Director of Selective Service.

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SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 947

IGAL ROODENKO, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR REHEARING.

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SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 947

IGAL ROODENKO, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Igal Roodenko respectfully shows to this Honorable Court:

That the judgment denying the Petition for Writ of Certiorari should be vacated and the Petition reheard, reconsidered and granted for the reasons that:

1. The sole charge against petitioner was a violation of Rules and Regulations promulgated by the Selective Service System for detaining conscientious objectors in a camp continuously (except for furloughs) and governing their entire lives at all times therein.

2. The only claimed provision in the Selective Training and Service Act of 1940, relative to petitioner or his conduct, after being classified as a conscientious objector to both combatant and non-combatant service, is comprised in the words, in section 5 (g) of the Act that "in lieu of * * * induction", (the objector shall) "be assigned to work of national importance under civilian direction".

3. The Act is devoid of

a. Definition of, or guides or standards for determining what is, work of national importance.

b. Guides or standards for the "civilian direction".

4. As to an objector, found, under the Act, exempt from induction, the Act is the same as the National Industrial Recovery Act in that "Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them"—condemned as unconstitutional in *A.L.A. Schechter Poultry Corp. et al. vs. United States,* 295 U. S. 495 (above quotation at 541).

5. While the Selective Training and Service Act was enacted for *the* (and only the) expressed purpose of increasing the personnel of the armed forces and contains specific and voluminous (and admittedly valid) provisions for registration, examination, classification, deferment, etc., of all male persons between the prescribed ages, it contains no provision for the government, regulation or control of any person who has registered, been examined, classified and found exempt from induction, except that he shall be "assigned to work of national importance under civilian direction" and the Act "*is silent on detention*" as was the Act involved in the case of *Ex Parte Endo,* 65 S. Ct. 208 (Dec. 18, 1944) in which the detention, in camps, of citizens of Japanese ancestry was held unauthorized.

6. Under the *Schechter* and *Endo cases,* the Selective Service System's establishment of detention camps for conscientious objectors and the rules and regulations promulgated for the complete government of those objectors in such camps, are without constitutionally delegated authority and are void.

7. If the many decisions (including that here sought to be reversed) which have held, or assumed, the constitutionality of the camps and the rules and regulations, are permitted, by denial of the petition in this case, to stand as the law, then a far step will have been taken toward the elimination of the distinction between legislature and executive—toward the destruction of all restrictions and safeguards on the delegation of legislative powers to executive and administrative agencies, in short, toward dictatorship.

6. If said decisions are permitted to stand as the law, on this phase of the Selective Training and Service Act, there will have been perpetuated the national hypocracy of formally recognizing religious freedom, with the legislative hand, while penalizing the exercise of that freedom, with the hand of administrative agencies, and, coincidently, a long step will have been taken toward peonage.

These points are more fully set forth in the petition which has been denied.

CONCLUSION.

Not simply in the name of this petitioner; not simply in the names of the conscientious objectors as a class, but in the name of the preservation of our Constitutional government, this Court is hereby petitioned to reconsider and vacate its judgment denying the petition for a writ of certiorari and to rehear and grant said petition.

CARLE WHITEHEAD,
Counsel for Petitioner.

I do hereby certify that I have carefully examined the foregoing petition for a rehearing and the allegations thereof are true, as I verily believe, and in my opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

CARLE WHITEHEAD,
Counsel for Petitioner.